



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 22, 1998

Ms. Karen L. Neal  
Attorney  
Legal Affairs  
Parkland Memorial Hospital  
6300 Harry Hines Boulevard  
Bank One Tower, Suite 301  
Dallas, Texas 75235

OR98-0221

Dear Ms. Neal:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111859.

The Dallas County Hospital District (the "district") received a request for a specific investigative file. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state that all the records in Exhibit "B" are excepted from disclosure under section 552.108. Section 552.108, the "law enforcement exception," provides in relevant part as follows:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; [or] (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication. . . .

Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See*

Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, you have not stated that the information pertains to a pending criminal investigation or prosecution so as to demonstrate that its release would interfere with the detection, investigation, or prosecution of crime. Nor have you demonstrated that the requested information relates to a criminal investigation that *concluded in a result* other than a conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2), (b)(2). Accordingly, we conclude that the records may not be withheld under section 552.108 of the Government Code. Therefore, we will address your other arguments against disclosure.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The section also encompasses information protected by other statutes. Texas law prohibits the public disclosure of the results of polygraph examinations. V.T.C.S. art. 4413(29cc). Thus, you must withhold the submitted polygraph results. You also claim that some of the documents must be withheld as medical records. The Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes, protects from disclosure "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." V.T.C.S. art. 4495b, § 5.08(b). The medical records that you have submitted in Exhibit "B-16" may only be released as provided by the MPA.

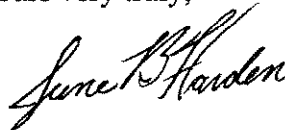
We also note that federal regulations prohibit the release of criminal history record information ("CHRI") maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Furthermore, where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). We, therefore, conclude that the district must withhold from required public disclosure the criminal history information under section 552.101 of the Government Code. *See id.*; *see also* Gov't Code § 411.106(b).

You also seek to withhold the names and statements of informants under the informer's privilege. Section 552.101 also incorporates the informer's privilege. This privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open

Records Decision Nos. 515 (1988) at 3, 208 (1978) at 1-2. The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 (1990) at 2, 515 (1988) at 4-5. The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 (1990) at 5. After reviewing the submitted information, we conclude that the district may withhold the identifying information of the individuals in Exhibits "B-1," "B-2," and "B-4." The individual in Exhibit "B-3 " is not an informant. Consequently, the district may not withhold the identifying information of that individual.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/ glg

Ref.: ID# 111859

Enclosures: Submitted documents

cc: Ms. Kay Vinson  
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(w/o enclosures)